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June 17, 2016

VIA EMAIL AND FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondent's Consolidated Response to Complainants' Email Motions Regarding Discovery

Please contact me if you have any questions.

Sincerely,

Anjali Vohra

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET Al

v.

MICHAEL HITRINOV, ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET Al

v.

MICHAEL HITRINOV, ET AL

RESPONDENTS' CONSOLIDATED RESPONSE TO COMPLAINANTS' MULTIPLE, REPETITIVE, EMAIL MOTIONS REGARDING DISCOVERY

Respondents hereby respond to the multiple and repetitive email motions made by Complainants' Counsel regarding Respondents' response to Complainants' motion to compel. All of these motions came after the undersigned identified to the Office of Administrative Law Judges, and Complainants' Counsel, that the response was directed at Complainants' motion to compel.

On June 15, 2015, Counsel for Complainants set what must be an FMC record for the most email motions in the least amount of time, filing such motions at 2:50 pm, 4:27 pm, and 9 pm. In those motions, they respectively moved that, due to a few typographical errors, the Presiding Officer should grant them relief as follows:

- **At 2:50 that the Presiding Officer**: (a) reject Respondents' response, (b) preclude Respondents from opposing the motion to compel, and (c) grant the motion to compel "on default."
- **At 4:27 that the Presiding Officer:** (a) reject Respondents' response as "fatally defective" and (b) deny Respondents leave to serve a corrected response.
- **At 9:00 that the Presiding Officer:** (a) "must" find the response "fatally procedural defective," (b) "*reject*" the response, and (c) "grant Complainants' instant motion on default, in its entirety."

Not only were these motions and arguments made improperly by email despite prior admonition by the Presiding Officer, they were actually directed not to the Presiding Officer, but to the secretary in the Office of Administrative Law Judges.

We leave the impropriety of such actions to another day. For now, Respondents simply file this brief, consolidated, reply to Complainants' peculiar motions.

The mere setting out of Complainants' motions is sufficient to dispel them. They all rest, without support, on the proposition that because the caption and opening sentence of Respondents response use the word "dismiss" instead of "compel" or "strike," the filing must be disregarded even though: (i) the substance was clearly directed toward Complainants' motion to compel, (ii) the conclusion specifically referenced the motion to compel, and (iii) Respondents' Counsel had already informed the Office of Administrative Law Judges (and Complainants' Counsel) that the response was directed to the motion to compel. Most oddly, Complainants' Counsel put forth this argument while apparently taking the position that their June 14, 2016 Status Report should be considered by the Presiding Officer, even though it was filed a day late.

The very first Rule of the FMC's Rules of Practice and Procedure states that such rules shall be "construed to secure the just, speedy and inexpensive determination of every proceeding." 46 C.F.R. 502.1. We can understand why Complainants' Counsel would like the "speedy and inexpensive" prospect of a ruling by default, but cannot see how anyone else could possibly deem that to be "just." That is particularly true in light of the absurdly draconian relief requested by Complainants, including the striking of Respondents' Answer.

In any event, there is nothing in the FMC Rules saying that a filing may be rejected because of an incorrect caption and first sentence, especially when the identity of the pleading to which it pertains is readily ascertainable (and indeed has already been ascertained). Nor does Counsel for Complainants cite any supporting precedent (the undersigned is aware of none) or otherwise explain how such clerical errors warrant rejection.

Further, Complainants are dead wrong when they suggest that rejection of Respondents' response would lead to a default ruling in their favor. Under the FMC's Rules, and as required by the Administrative Procedure Act, the proponent of an administrative order (such as a movant) bears the burden of proof. 46 C.F.R. 502.155. Thus, even if Respondents filed no response (or such response were disregarded), the burden would still be on Complainants to prove their entitlement to relief. Complainants have made little or no attempt to meet that burden, particularly in light of the remedies they request.

Finally, it is well established that scrivener's errors should be disregarded when the intention of the parties (or here party) is clear. As shown by the cases cited in the margin, this doctrine applies to all types of documents, including pleadings.[1] Respondents' intent was made

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[1] See, e.g., *United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439 (1993) (statute); *Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245 (Fed. Cir. 2000) (patent license); *United States v. Devine*, 934 F.2d 1325 (Fifth Cir. 1991) (lower court

(Footnote continued on next page)

clear not only by the substance and conclusion of the response, but also by direct statement of Respondents' Counsel to the Office of Administrative Law Judges.

CONCLUSION

For the foregoing reasons, Complainants' e-mail motions regarding discovery should be denied.

Respectfully submitted,

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judgment); *United States v. Maxwell*, 45 M.J. 406 (U.S. Ct. App. for the Armed Forces 1996) (search warrant); *Loggerhead Turtle v. City Council of Volusia County, Florida*, 148 F.3d 1231 (11th Cir. 1998) (Amended Complaint); *Robinson v. Sappington*, 351 F.3d 317 (7th Cir. 2003) (notice of judicial appeal); *Young v. Verizon's Bell Atlantic Cash Balance Plan*, 615 F.3d 808 (7th Cir. 2010) (ERISA Plan).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Consolidated Response to Complainants' Email Motions Regarding Discovery by express courier to the following:

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Dated at Washington, DC, this 17th day of June, 2016.

Anjali Volra
Counsel for Respondents